

**UNITED STATES BANKRUPTCY COURT
FOR THE
DISTRICT OF NEW HAMPSHIRE**

In re:

Bk. No. 03-13527-MWV
Chapter 7

Theresa M. McAdam,
Debtor

Theresa M. McAdam,
Plaintiff

v.

Adv. No. 04-1140-MWV

Raymond E. Lorden, Jr., Individually and as
Trustee of the REL Revocable Trust,
Defendant

Grenville Clark, III, Esq.
GRAY WENDELL & CLARK P.C.
Attorneys for Plaintiff

Michael S. Askenaizer, Esq.
LAW OFFICES OF MICHAEL S. ASKENAIZER, PLLC
Attorney for Defendant

MEMORANDUM OPINION

The Court has before it Defendant Raymond E. Lorden, Jr., Individually and as Trustee of the REL Revocable Trust's (the "Defendant") motion to dismiss complaint of Plaintiff Theresa M. McAdam (the "Plaintiff") for damages for violation of automatic stay. The Defendant filed a memorandum of law in support of his motion. The Plaintiff objected to the Defendant's motion on July 30, 2004. On August 17, 2004, the Court held a hearing on this matter and took the matter under advisement. For the reasons set out below, the Defendant's motion to dismiss is granted.

This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the “Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire,” dated January 18, 1994 (DiClerico, C.J.).

Facts

The Plaintiff filed a Chapter 13 bankruptcy petition in this Court on October 15, 2003. Shortly after the Plaintiff’s bankruptcy filing, GE Capital, a secured creditor holding a claim secured by a mortgage on the Plaintiff’s residence located at 106 North Pepperell Road, Hollis, New Hampshire (the “Subject Property”), obtained relief from the automatic stay on an emergency basis and was given permission to foreclose on the property. The Defendant was the successful bidder at the foreclosure auction conducted on October 16, 2003. The foreclosure deed dated October 27, 2003, was recorded in the Hillsborough County Registry of Deeds on November 7, 2003. On November 24, 2003, the Plaintiff converted her case to Chapter 7. Although the foreclosure sale was properly closed, the Plaintiff and her husband did not vacate the Subject Property and continued to reside therein. The Defendant took certain actions, including filing eviction proceedings, in an attempt to evict the Plaintiff and her husband and to obtain possession of the Subject Property.

On June 17, 2004, the Plaintiff filed a Complaint for Damages for Violation of Automatic Stay alleging that the Defendant never obtained, nor sought to obtain, any relief from the automatic stay to be allowed to take these actions. The Plaintiff sought an award of actual damages including attorneys’ fees and expenses in the amount of \$10,000 plus punitive damages in the amount of \$25,000 for the Defendant’s willful violation of the automatic stay in accordance with § 362(h) of the Bankruptcy Code.¹ The Defendant filed a motion to dismiss the Plaintiff’s complaint on July 19, 2004, and the Plaintiff objected on July 30, 2004.

¹ Unless otherwise noted, all statutory section references herein are to the Bankruptcy Reform Act of 1978, as amended, 11 U.S.C. §§ 101, *et seq.*

DISCUSSION

The sole issue for the Court's resolution is whether the Plaintiff retained any interest in her residence protected by the automatic stay after the foreclosure sale was completed. The Defendant argues that at the conclusion of the foreclosure sale, the Plaintiff had no further interest in the Subject Property, thus the automatic stay did not protect her. On the other hand, the Plaintiff argues that, notwithstanding the termination of the Plaintiff's ownership interest, the Plaintiff's continued occupancy gave her an equitable interest which was property of the bankruptcy estate and which was therefore protected by the automatic stay.

The automatic stay imposed by § 362 does not apply to property unless the debtor or the bankruptcy estate has an interest therein. See § 541(a)(1). Under New Hampshire law, the mortgagor does not have a right of redemption after foreclosure. See N.H. Rev. Stat. Ann. § 479:18 (2001). Furthermore, title to the foreclosed premises shall pass to the purchaser free and clear of all interests and encumbrances which do not have priority over such mortgage upon the recording of the deed and affidavit. See N.H. Rev. Stat. Ann. § 479:26 (2001); See also Barrow v. Boles, 141 N.H. 382, 393 (1997) ("Even though legal title does not pass until the deed has been recorded . . . 'this rule does not change the fact that [the debtor] possessed neither a legal nor an equitable interest in the property once the auctioneer's hammer fell and the memorandum of sale was signed.'") (citation omitted). The Court notes that the Plaintiff does not dispute that the foreclosure deed was properly recorded. Because the Plaintiff lost her legal and equitable interests in the property by virtue of the foreclosure sale and subsequent recording of the foreclosure deed, the Subject Property ceased to be the property of the estate for purposes of § 541. See In re Rodgers, 333 F.3d 64 (2nd Cir. 2003) (holding that because the debtor's legal or equitable interest did not survive the foreclosure auction, the foreclosed property is no longer property of the estate). As a result, the automatic stay is not applicable to the Defendant's actions to have the Plaintiff removed from the Subject Property.

CONCLUSION

This opinion constitutes the Court's findings and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. The Court will issue a separate final judgement consistent with this opinion.

DONE AND ORDERED this 2nd day of November, 2004, at Manchester, New Hampshire.

/s/ Mark W. Vaughn

Mark W. Vaughn

Chief Judge